

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Improving Public Safety Communications In)	
The 800 MHz Band)	WT Docket 02-55
)	
Consolidating the 800 and 900 MHz)	
Industrial/Land Transportation and Business)	
Pool Channels)	
)	
Amendment of Part 2 of the Commission's Rules)	
Allocate Spectrum Below 3 GHz for Mobile and)	ET Docket No. 00-
258)	
Fixed Services to Support the Introduction of New)	
Advanced Wireless Services, including Third)	
Generation Wireless Systems)	
)	
Petition For Rule Making of the Wireless)	
Information Networks Forum Concerning the)	RM-9498
Unlicensed Personal Communications Service)	
)	
Petition For Rule Making of UT Starcom, Inc.,)	
Concerning the Unlicensed Personal)	RM-10024
Communications Service)	
)	
Amendment of Section 2.106 of the Commission's)	
Rules to Allocate Spectrum at 2GHz for Use by)	ET Docket No. 95-
18)	
The Mobile Satellite Service)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Washoe County, Nevada ("Washoe"), the City of Chesapeake, Virginia ("Chesapeake") and the City of Overland Park, Kansas ("Overland Park")(jointly the "Petitioners"), through counsel and pursuant to Section

1.106 of the Commission's Rules, 47 C.F.R. §1.106, hereby respectfully submits a Petition for Partial Reconsideration of the Commission's *Second Memorandum Opinion and Order* in WT Docket No. 02-55.¹ In support thereof, the following is shown:

I. BACKGROUND

Each of the Petitioners is an 800 MHz public safety licensee, and each will be rebanded pursuant to the Commission's Rules as adopted in WT Docket No. 02-55. Each of the licensees have thus far failed to reach a rebanding agreement with Sprint Nextel Communications ("Nextel").² Each licensee was involved in mediation with Nextel, which resulted in a Recommended Resolution ("RR") which was filed with the FCC. The Chesapeake and Washoe cases resulted in a Commission decision which, while not totally supportive of the licensee's position, was acceptable to the licensee, while Overland Park was willing to accept the RR.

In Washoe and Chesapeake, Nextel has filed an Application for Review of the FCC's decision. Further, in Washoe and Chesapeake's case, Nextel has also filed a Request for De Novo Hearing. This litigation remains pending at this time.

II. DISCUSSION

¹ *Second Memorandum Opinion and Order*, WT Docket No. 02-55, 72 RF 39756 (July 20, 2007)(hereinafter "*Second MO&O*").

² In Chesapeake's case, it has not been able to reach an agreement with Nextel on a Planning Funding Agreement ("PFA").

The Petitioners respectfully request reconsideration of the Commission's decision to hold licensees responsible for their costs of litigation in front of the Commission with regard to their rebanding agreements. It is the Petitioners' position that this reallocation of burden represents an abrogation of the Commission's commitment to the 800 MHz public safety community that licensees would not bear the cost of rebanding.

It is not the desire of the Petitioners to revisit the discussion of the background and legal issues regarding the FCC's decision. Rather, the Petitioners incorporate by reference the arguments and rationale contained in the Petition filed by the City of Boston, et. al. on June 14, 2007. However, the Petitioners would like to put a "face" to the dilemma which the FCC has inadvertently forced upon licensees.

Initially, it should be noted that the mediation procedures adopted in the proceeding are significantly flawed. In the process adopted, both Nextel and the licensee in mediation may file a "Statement of Position" ("SOP") with the FCC within ten days of the issuance of the Recommended Resolution, with no reply filing permitted. The SOP, pursuant to the *Second MO&O*, is not a recoverable expense. Since both parties must file on the same day, licensees must guess whether Nextel will be filing an SOP (which experience shows thus far they do in all cases). Thus, even if a licensee is willing to accept the RR, they have no choice but to incur non-recoverable costs and file

an SOP, as the inability to file a responsive document means that the licensee must make assumptions on what will be filed by Nextel.³

In Washoe and Chesapeake's case, the Petitioners were willing to accept the Commission's decision. However, Nextel's filing of both an Application for Review and a Request for De Novo Hearing means that the licensees must incur extremely significant costs in litigating cases that they won.

The Petitioners appreciate the Commission's concern that parties may seek to "run up" litigation fees, and delay the rebanding process. However, the Commission is fully capable of discerning which appeals are frivolous, and which are genuine. More importantly, though, it is bizarre to these licensees that the Commission can say on one hand that licensees are not to bear any costs in rebanding, but then make them bear costs anyway in having to defend decisions in their favor. These two positions cannot possibly be reconciled.

The Commission's decision has, in essence, given Nextel the ability to conduct economic blackmail in rebanding.⁴ By having the threat of significant unrecoverable Commission litigation looming if licensees do not accept Nextel's offer, licensees are put in the absurd position of losing, even

³ Overland Park is an excellent example of where that exact situation occurred. Overland Park would have accepted the RR, but knew that Nextel would not. Thus, Overland Park was compelled to protect its rights by filing a SOP.

⁴ Whether intention blackmail or not, the effect of Nextel filing reconsideration petitions in every case is the same.

when they win. The Petitioners cannot believe that the Commission intended such a result.

The Commission has numerous options at its disposal to prevent this result. While the filing of a SOP may not be too economically burdensome, a hearing is. Therefore, at a minimum, the Commission must find that a Nextel appeal of a decision which the licensee finds acceptable automatically triggers a finding that the licensee's participation in the appeal process is a recoverable expense.⁵ Only in this way can the Commission truly have a process wherein the sincere, cooperative licensee does not incur rebanding costs, as promised by the Commission.

⁵ The Commission should also consider licensee appeals for legitimate disputes to be a recoverable expense, which the Commission can consider on a case-by-case basis.

III. CONCLUSION

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**WASHOE COUNTY, NEVADA
CITY OF CHESAPEAKE, VIRGINIA
CITY OF OVERLAND PARK, KANSAS**

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